

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID No. 0808007826A
)	
ANDRE NORWOOD,)	
)	
Defendant.)	

Submitted: April 25, 2011
Decided: July 29, 2011

On Defendant's Motion for Postconviction Relief - DENIED.

ORDER

Martin B. O'Connor, Esquire, Department of Justice, 820 North French Street,
Wilmington, Delaware 19801. Attorney for State of Delaware.

Andre Norwood, James T. Vaughn Correctional Center, Smyrna, Delaware 19977.
Pro Se Defendant.

CARPENTER, J.

On this 29th day of July, 2011, upon consideration of the defendant's Motion for Postconviction Relief, the Court makes the following findings:

1. On May 13, 2009, the jury found the defendant, Andre Norwood ("Norwood") guilty of Robbery First Degree, Possession of a Firearm During the Commission of a Felony, Possession of a Deadly Weapon by a Person Prohibited, and Conspiracy Second Degree after a two-day trial. Norwood was sentenced to eight years of incarceration on July 6, 2009, and the Delaware Supreme Court subsequently affirmed his conviction. The defendant now has filed this Motion for Postconviction Relief.

2. Norwood was charged and ultimately convicted in connection with the robbery of the Getty Gas Station Store on Lovering Avenue in Wilmington, Delaware on August 4, 2008.¹ At approximately 8:00 a.m., Derris Lloyd ("Lloyd") entered the store and bought a bottle of water from Naginbhai Patel ("Patel"), who was working alone in the store that morning. Lloyd exited the store and returned a few minutes later with an armed individual which the jury found to be Norwood. Lloyd went behind the counter, reached into the cash register and removed money while Norwood pointed a firearm at Patel. Patel described Norwood as slim in stature, approximately five foot six inches in height, and

¹ A fuller presentation of facts can be found in the Supreme Court's order denying Norwood's appeal. *See Norwood v. State*, No. 446, 2009, at 1-3 (Del. Mar. 1, 2010).

wearing a black hoodie. At trial the surveillance videos from the store taken at the time of the robberies was played, and it showed two individuals meeting Patel's description of the robbers exiting the gas station and entering a gold Oldsmobile parked behind the store.

3. The police traced the vehicle to Sharnelle Wright ("Wright"), who is Lloyd's aunt. Wright testified at trial that the vehicle in the video was her car and positively identified Lloyd and Norwood in still images taken from the video. Wright also testified that she had seen Norwood in the past with Lloyd in her vehicle. The police also found Norwood's fingerprints and palm prints on the exterior of the car. Inside the car, the police found a black hoodie matching Patel's description and a Family Court payment receipt with Norwood's name on it. The police also found a magazine for an assault-type weapon and 9-millimeter Luger bullets at the residence where Norwood and Lloyd were arrested.

4. Norwood has asserted that he received ineffective assistance of counsel at his trial. To show ineffective assistance of counsel, a defendant must show first, that his counsel's efforts fell below a reasonable objective standard and second, that there is a reasonable probability that the outcome of the case would have been different absent counsel's unprofessional conduct.² The defendant must

² *Strickland v. Washington*, 466 U.S. 668, 687 (1984). See also *Winn v. State*, 705 A.2d 245 (Del. 1998).

overcome a heavy presumption that counsel's conduct was professionally reasonable.³ Furthermore, the Court must evaluate counsel's behavior from counsel's perspective at the time of the conduct, free from the distorting effects of hindsight.⁴ The defendant must substantiate allegations of actual prejudice or risk summary dismissal.⁵

5. Norwood principally claims that his counsel failed to investigate his defense. He contends that he identified witnesses who could provide an alibi, but his counsel failed to interview any of them or to call any of them to testify on his behalf at trial. Norwood also complains that his counsel did not present any affirmative defense on his behalf and that his counsel did not investigate any of the evidence presented by the State, which Norwood characterized as largely circumstantial.

6. The record does not support Norwood's claims with respect to his counsel's alleged failure to investigate. In an affidavit, Norwood's counsel stated that he had spoken at trial with the defendant's mother, one of the potential witnesses identified by Norwood, who indicated that she could not provide an alibi for her son at the time of the robbery because he had left home some time before the robbery occurred. While it is unclear whether counsel pursued the

³ *Strickland*, 466 U.S. at 690.

⁴ *Gattis v. State*, 697 A.2d 1174, 1178 (Del. 1997).

⁵ *Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1996).

grandmother and brother to see if they would confirm the defendant's whereabouts at the time of the robbery, it would seem reasonable that the inquiry of the mother would have led her to identify to counsel any other individuals who could potentially provide an alibi for her son if one clearly existed, and it was reasonable for counsel to infer that family witnesses would be unable to provide a defense to the charges. Counsel's decision not to call the defendant's mother as well as the other family witnesses, when it appears that they would not truthfully have provided an alibi for Norwood on the morning of the robbery, is well within the broad range of professionally reasonable conduct of defense counsel. Norwood therefore cannot sustain an ineffective assistance of counsel claim based on the decision by counsel as it appears there were no credible alibi witnesses to be called by the defense.

7. Norwood's claim that his counsel was ineffective for failing to present an affirmative defense is similarly without merit. Norwood complains that the State's case against him was weak, consisting only of Wright's identification of him as one of the individuals in the surveillance video and physical evidence connecting him to the car that was used in the robbery. The trial transcript indicates that counsel cross-examined the witness who provided the identification on the fact that she was basing her identification of Norwood on having seen him

on one or two previous occasions.⁶ Furthermore, counsel moved for a judgment of acquittal upon the State's conclusion of its presentation of evidence, arguing that the State's evidence was too circumstantial to warrant the case proceeding to the jury.⁷ While the motion was denied by the Court, counsel was actively engaged in defending the defendant to the extent evidence was available and credible.

Accordingly, Norwood's claim of ineffective assistance of counsel on this ground is simply without merit.

8. Norwood also asserts that his counsel failed to respond adequately to a juror's complaint that a podium in the courtroom obscured her view of the defendant at trial. The Court notes that this was a matter of significant discussion in the Supreme Court's order denying the defendant's appeal. However, in the context of the ineffective assistance of counsel claim, the record simply does not support the defendant's contention. When the issue of one of the jurors having difficulty observing the defendant was brought to the attention of the Court, the Court provided counsel the opportunity to have the defendant move his seat so that the jury could see him unobstructed by a podium. From the affidavit filed by counsel, it appears that he decided not to take the Court up on its suggestion believing that if one of the jurors could not observe the defendant fully, it may

⁶ Trial Tr. Day 1, May 12, 2009 at 68-70.

⁷ Trial Tr. Day 2, May 13, 2009 at 62-63.

lead to a decision by the juror that she could not support the identification made on the video and perhaps would find the defendant not guilty. While a risky strategy decision, it was not an unreasonable one in light of the evidence against the defendant, and the Court finds such decision within the acceptable range of professional conduct.

9. Based upon the discussion above, the Court finds the defendant's Motion for Postconviction Relief, based upon the ineffective assistance of counsel, to be without merit and the defendant's Motion for Postconviction Relief is hereby DENIED.⁸

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

⁸ The defendant has also filed a Motion for Summary Judgment. Such motions are not appropriate in criminal matters, and therefore it is summarily dismissed.